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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1086

THE MOODY BIBLE INSTITUTE OF CHICAGO,
A CORPORATION NOT FOR PROFIT,
Appellant,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

SUPREME COURT OF ILLINOIS.

No. 26665.

STATEMENT OF JURISDICTIONAL FACTS.

Pursuant to Rule 12, paragraph 1, of the Rules of the Supreme Court of the United States, THE MOODY BIBLE INSTITUTE OF CHICAGO, a corporation, appellant, presents the following statement, particularly discussing the basis upon which appellant contends that the Supreme Court of

the United States has jurisdiction upon appeal to review the decree of the Supreme Court of the State of Illinois appealed from herein.

A.

The Statutory Provisions Believed to Sustain the Jurisdiction.

Section 237, of the Judicial Code of the United States, 28 U. S. C. A., Section 344.

B.

The Statute of the State of Illinois, the Validity of Which Is Involved.

As construed by the Supreme Court of the State of Illinois, the provisions of the Local Improvement Act (1941 Ill. Rev. Stats., Chap. 24, Sec. 84-1 to 84-99) violate petitioner's constitutional guarantees under Section 1 of the 14th Amendment to the United States Constitution.

The provisions of this act authorize various municipalities of the State to construct local improvements by special assessment or otherwise and to exercise the power of eminent domain where the construction of the improvement requires the taking or damaging of private property.

C.

The Judgment Appealed From and Application for Appeal.

Judgment was rendered and the opinion of the Supreme Court of the State of Illinois in this case was filed on the 17th day of November, 1942. The motion of appellant for rehearing was denied by the Supreme Court of the State of Illinois on the 13th day of January, 1943, and the judgment of the court thereupon became final. The application for

appeal to this Court is presented herewith by petition, within three (3) months after said judgment became final.

D.

The Nature of the Case, Rulings of the Court and Cases Believed to Sustain the Jurisdiction.

A mandamus suit was filed herein in the Superior Court of Cook County, Illinois, to enforce the constitutional right of the appellant to just compensation in the payment of the balance of $365,782.00 and interest due on the unconditional judgment awarded in its favor against the city of Chicago by the County Court of Cook County in November, 1930, for property taken and damaged in connection with the construction of a local improvement in the City of Chicago.

The claim that the provisions of the Local Improvement Act violated appellant's rights under the due process clause of the State as well as of the Federal Constitutions, has been raised and contended for consistently from the time the suit was filed in the *nisi* court to the entry of the opinion in this Court.

The Supreme Court has repeatedly held that the requirement of "just compensation" requires the reasonably prompt payment of a condemnation judgment. *People* v. *Kelly*, 361 Ill. 54, 58. As consistently urged by the appellant, the refusal of the city to pay the remainder of the judgment for nearly thirteen (13) years deprived appellants of just compensation. It has also been urged that stipulations cannot change the terms of a court's final judgment unless included within and made a part of that judgment. The opinion of the Illinois Supreme Court correctly states that one of appellant's chief contentions was that the stipulation, if used as a bar to the payment of the judgment, was a violation of Section I of the 14th Amend-

ment of the United States Constitution. A constitutional question is, therefore, necessarily involved in this case. *Van Dyke* v. *Ill. Comm. Men's Ass'n,* 358 Ill. 458.

The United States Supreme Court has taken jurisdiction of cases where much less was done to raise the Federal question than was done by the appellant in the case at bar, where it has made five consecutive efforts to secure its constitutional rights. In *Hendersonville Light & Power Co.* v. *Blue Ridge I. R. Co.,* 243 U. S. 563, 61 L. Ed. 900, Justice Holmes said:

> "The respondents in their answer set up that the condemnation in this manner and for the purpose alleged would be the taking of private property without due process of law, in violation of the 14th amendment, and we assume that the record discloses a technical right to come to this court (citing cases). The decision of the Supreme Court in sustaining the condemnation discusses only matters of state law, but the Chief Justice dissenting, intimated that the taking infringed the Constitution of the United States."

The case of *O'Neill* v. *Leamer,* 239 U. S. 245, 60 L. Ed. 249, 263, shows that what petitioner did here is sufficient to present a Federal question. At p. 263 (L. Ed.) the court said:

> "The plaintiffs assailed the Nebraska Statute as repugnant to the state constitution, and further averred that to permit the defendants to construct the ditch would deprive the plaintiffs of their property without due process of law and deny him the equal protection of the laws, in violation of the 14th Amendment * * *"

And at page 264 the court denied the motion to dismiss the writ of error, saying:

> "The defendants in error have moved to dismiss upon the ground that there is no Federal question

> whatever presented by the record. But we think that the plaintiffs sufficiently raised the question whether the appropriation was essentially for private purpose, and hence contrary to the 14th Amendment, as amounting to a deprivation of property without due process of law, and that their contention as to their Federal right in this respect was denied by the state court. In this view, jurisdiction attaches (citing cases) and we pass to the consideration of the statutory plan."

Appellant likewise contends that the very purpose and gist of this suit was to secure just compensation and that the record and pleadings present Federal questions of which the United States Supreme Court has jurisdiction.

The appellant here has invoked the constitutional guarantee for the payment of just compensation for its property taken for public use and the defendant pleads a stipulation which it alleges is a bar to the suit. As found and stated by the Illinois Supreme Court in its opinion herein:

> "In its reply to the answer of the defendants in error and on the trial it was claimed that the stipulation, if used as a bar to payment of the judgment, was a violation of the provisions of the Illinois and Federal constitutions, in that such use was (1) a violation of section 13 of Article II of the Illinois constitution, which provides that just compensation shall be paid for property taken or damaged for public use, and (2) a violation of the Illinois constitution and section 1 of the fourteenth amendment to the constitution of the United States which provide that no person shall be deprived of his property without due process of law."

Appellant's further contention is that the rulings of law by the courts below upon the evidence herein, prevented it from obtaining just compensation for its property, and constituted a violation of its rights to an equal protection of the laws as well as of the right to due process of law under the fourteenth amendment.

The right to exercise the power of eminent domain or condemnation and to take or damage private property for public improvement is inherent in every State. But to satisfy the due process provision of the Federal constitution, proper and adequate provisions must be made for just compensation to be paid to the owners of the property affected. *Cincinnati* v. *Louisville, etc., R. Co.*, 233 U. S. 390; *U. of So. Cal.* v. *Robbins*, 295 U. S. 738.

The taking and damaging of appellant's property in the case at bar, without the payment of full and just compensation therefor, constituted a denial of its right to due process of law under the Federal Constitution. *Appleby* v. *Buffalo*, 221 U. S. 524; *Norwood* v. *Baker*, 172 U. S. 277.

Where a judgment of a State court authorizes the taking of private property for public use without the payment of just compensation, the affirmance of such judgment by the highest court of the State is a denial of the right secured to the owner by the due process clause of the Federal Constitution. *Chicago, etc., R. Co.* v. *Chicago*, 166 U. S. 226.

Nor can private property be constitutionally taken for public use at a compulsory price which falls below the measure of just compensation. *U. Rys. & E. Co.* v. *West*, 280 U. S. 234.

As hereinabove already pointed out, a further violation of appellant's constitutional rights under the 14th amendment arose out of the rulings of law upon the evidence herein. Appellant's first contention is that the stipulation upon which appellee relies cannot be used as a bar to defeat the claim for full payment of the compensation as adjudicated by the County Court. It next contends that even if such a stipulation could lawfully be given such effect in a proper case, the evidence herein, introduced by the appellee itself, showed that all of requirements of the stipulation were complied with by appellant and that it was therefore

entitled to full payment of its judgment. There is no evidence in the record to support the ruling of the lower courts to the effect that the stipulation barred appellant's right to collect its judgment in full.

Where a finding of fact is not supported by any evidence, as in the present case, and the finding deprives appellant of a constitutional right, the Supreme Court will review the record. *Interstate Amusement Co.* v. *Albert*, 239 U. S. 500; *Truax* v. *Corrigan*, 257 U. S. 333; *Kansas City Southern R. R. Co.* v. *C. H. Albers Co.*, 223 U. S. 573.

E.

The Federal Questions Involved Are Substantial.

The inherent right of appellant as a property owner in a special assessment proceeding to obtain just compensation for its property, either taken or damaged, and to have access to the courts for the protection of its rights upon the same terms, conditions, and equality with other persons similarly situated, are the issues in this case. The repugnancy of the Local Improvement Act of the State of Illinois to these constitutional rights under the principles contended for herein, has never been adversely determined by this Court, and appellant's contentions are sustained by the numerous decisions of this Court. (See authorities cited under foregoing subdivision.) The questions presented are not frivolous. *Griffith* v. *Connecticut*, 218 U. S. 563, 573.

F.

Questions of Federal Jurisdiction Raised in State Courts.

The foregoing questions of Federal jurisdiction were first raised by appellant in the trial court, as pointed out by the opinion of the Illinois Supreme Court. The questions

were again raised and argued in all of appellant's briefs in the Illinois Supreme Court.

Appellant contends that the construction placed upon the provisions of the Local Improvement Act, applicable to the facts involved in the case at bar, violated appellant's rights under the fourteenth amendment to the Federal Constitution. To the best of appellant's knowledge, these questions have never been passed upon by the Supreme Court of the United States.

The question of the repugnancy of the involved provisions of the Local Improvement Act to the 14th amendment to the Federal Constitution was fairly and timely raised, is presented by the record and was necessary to a determination of the cause. *Chapman* v. *Goodnow's Admr.*, 123 U. S. 540, 548; *Murray* v. *Charleston*, 96 U. S. 232; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226; *Sulley* v. *American National Bank*, 178 U. S. 289.

Alternative Prayer for Writ of Certiorari and for Time to File Briefs in Support Thereof.

Appellant prays that in the event that this Honorable Court finds that the record and pleadings herein fail to disclose a jurisdictional question reviewable by this Court on appeal, that the case may then be considered as an application for a writ of certiorari and that appellant be allowed reasonable time within which to file its brief in support thereof.

Respectfully submitted,

HOWARD F. BISHOP,
Attorney;
WARREN H. ORR,
Of Counsel.

APPENDIX "A".

Docket No. 26665—Agenda 25—May, 1942

The People *ex rel.* The Moody Bible Institute of Chicago, Plaintiff in Error, *v.* The City of Chicago et al., Defendants in Error.

Mr. Justice Fulton delivered the opinion of the Court:

The plaintiff in error was awarded a judgment in the county court of Cook county against the city of Chicago on November 28, 1930, in the sum of $896,227 to compensate it for the taking and damaging of certain property belonging to it on La Salle Street in said city. Shortly after the entry of the judgment, the city paid $530,445 thereof, leaving unpaid the principal amount of $365,782.

In the present cause the plaintiff in error filed a *mandamus* action in the superior court of Cook county to compel the city of Chicago to pay the unpaid portion of the judgment. The city filed an amended counterclaim, wherein it alleged that by reason of a breach of an agreement on the part of the Moody Institute to remove obstructions from the land condemned, the city was entitled to damages equivalent to interest on the amounts paid upon the judgment awards. The trial court refused to award the *mandamus* writ for the payment of such balance and also found against the city on it amended counterclaim. An appeal was taken to this court by plaintiff in error, but the notice of appeal was preceded by a notice of appeal filed two days before by the defendants in error, taking an appeal to the Appellate Court. The appeal to this Court was therefore dismissed "without prejudice." The plaintiff in error then directed its attention to the Appellate Court, First District. There it moved the Appellate Court to transfer the cause to this court on the ground that constitutional questions were involved. The motion was taken with the case by the Appellate Court and on November 29, 1941, that court filed an opinion denying the motion on the grounds that no constitutional questions were involved, and also affirming the judgment of the superior court. Thereafter, a petition for leave to appeal was filed in this court by the plaintiff in

error, and on January 20, 1942, leave to appeal was denied. The plaintiff in error now brings the present writ of error seeking to have the case reviewed in this court. The defendants in error have filed a motion to dismiss the writ of error, which motion was taken with the case, and briefs of both parties have been filed in this cause.

On October 6, 1930, the plaintiff in error and the city of Chicago entered into a stipulation, the purpose of which by its terms was to compromise and settle the condemnation suit then pending between the parties in the Supreme Court of the United States. The stipulation was made a few weeks prior to the entry of the condemnation judgment, for which payment is sought by this action, but was never filed in the cause nor made a part of the record in the county court of Cook county. On the trial of this *mandamus* suit, the superior court admitted the stipulation in evidence over objection of plaintiff in error. In the answer of the defendants in error to the petition for writ of *mandamus*, the stipulation was set up as a matter of defense to the immediate payment of the balance of the condemnation judgment. By the terms of the stipulation the City of Chicago agreed to set aside all verdicts and judgments theretofore rendered in the condemnation suit, and to permit evidence to be presented to the county court in a subsequent hearing, the effect of which was to increase the judgment and awards to plaintiff in error by a sum in the neighborhood of $350,000. By its further terms the stipulation provided that plaintiff in error would remove all obstructions, or submit to the Board of Local Improvements a *bona fide* contract for their removal, from the part of its properties taken in the condemnation proceeding. It was the contention of the city of Chicago that it was not compelled to pay the balance of the judgment until the plaintiff in error had removed such obstructions. There was the further provision in the stipulation that the city should pay plaintiff in error in cash the amounts originally allowed in the findings and judgment on each piece of property in the condemnation suit, after deducting therefrom the assessments originally confirmed against the remainder of such properties; that upon such payments being made the plaintiff in error would surrender to the city of Chicago the property taken for the

contemplated improvement, and have orders entered in the condemnation proceeding permitting the city to take possession of such properties.

The partial payments, amounting to $530,445, were made by the city and it entered into possession of the property sufficiently to complete the paving portion of the project but was unable to proceed with the sidewalk portion of the improvement because of the building structures remaining on that portion of the condemned property.

It is insisted by the plaintiff in error that this is its first clear opportunity to present the constitutional questions involved in the case to this court. In its reply to the answer of the defendants in error and on the trial it was claimed that the stipulation, if used as a bar to payment of the judgment, was a violation of the provisions of the Illinois and Federal constitutions, in that such use was (1) a violation of section 13 of Article II of the Illinois constitution, which provides that just compensation shall be paid for property taken or damaged for public use, and (2) a violation of the Illinois constitution and section 1 of the fourteenth amendment to the constitution of the United States which provide that no person shall be deprived of his property without due process of law. The same constitutional questions were again raised by cross appeal in the Appellate Court. On the motion to transfer made in that court, it was further urged that the Appellate Court had no jurisdiction on review because the proceeding was a continuation of the local improvement proceeding in which the judgment herein sought to be enforced was rendered, and therefore only a direct appeal to the Supreme Court was proper.

In support of their motion to dismiss the writ of error, the defendants in error contend that the only method of obtaining a review by plaintiff in error from the judgment of the Appellate Court is by petition for leave to appeal, or certificate of importance, except where writ of error is preserved by section II of article VI of the constitution, and that no debatable constitutional question is involved in this case.

After a careful review of the record we believe the motion to dismiss is well taken. It is conceded that if no stipulation had been entered into, the taking of property with-

out paying the full amount of the condemnation judgment would have been a violation of the constitutional rights of the plaintiff in error. (Const. of 1870, sec. 13, art. II; *People ex rel. Farwell Co.* v. *Kelly*, 361 Ill. 54; *Eldred Drainage and Levee District* v. *Wilcoxson*, 365 id. 249.) Those authorities all support the well known constitutional protection that "private property shall not be taken or damaged for public use without just compensation," and that the constitutional guaranty is not satisfied by the judgment alone, but only by the payment of it. But the city of Chicago and the plaintiff in error saw fit to enter into a written contract or stipulation wherein and whereby very substantial questions and differences of opinion were compromised, settled and agreed upon, which creates an entirely different situation from the facts set forth in the above mentioned cases. The situation in this case is quite different from the facts in *People ex rel. First Nat. Bank* v. *Kingery*, 368 Ill. 205. In that case a clear constitutional question was involved because a property owner sought by *mandamus* to compel the Director of the Department of Public Works and Buildings to institute proceedings to ascertain damages due to a separation of grades on a highway extending along two sides of her property. The trial court awarded the writ, and the appeal was improperly taken to the Appellate Court, where the judgment of the lower court was reversed. A petition for leave to appeal was filed in this court and granted, even though there had been no motion for transfer made in the Appellate Court and although that court had no jurisdiction to hear the appeal. In the present case a motion to transfer was made in the Appellate Court and denied and later the judgment against plaintiff in error affirmed. It thereupon filed a petition for leave to appeal, asking this court to assume jurisdiction for the purpose of determining the alleged constitutional questions just as though the order of transfer had been made, or, in the alternative, if it considered that no constitutional questions were presented, to grant leave to appeal. This court thereupon denied leave to appeal.

The position of plaintiff in error that the judgment was final and unconstitutional and that the stipulation entered into before the judgment is no limitation or restriction whatever upon the judgment, since the stipulation was en-

tirely omitted from the record in that case, presents questions that were very properly considered by the Appellate Court. They involve the interpretation and effect of the stipulation and kindred questions concerning the validity of the judgment and do not necessarily raise a constitutional question.

The contention of plaintiff in error that this *mandamus* proceeding is, to all effects and purposes, a continuation of the original proceeding under the Local Improvement Act, so as to fall within the provisions of section 95 of that act (Ill. Rev. Stat. 1941, chap. 24, par. 84-95), providing that appeals from final judgments or orders may be taken to the Supreme Court, is not sound. In *McBane* v. *People ex rel. Stout*, 50 Ill. 503, a petition for *mandamus* was held to be an original suit.

No other questions different from those contained in the petition for leave to appeal are included in the present writ of error. All other questions presented by the petition are again presented by the writ of error and no such method or manner of appeal is provided by either the statutes of the State of Illinois or the constitution. Sec. 75 Civil Practice Act; Ill. Rev. Stat. 1941, chap. 110, par. 199; Const. of 1870, sec. II, art. VI.

The writ of error is therefore dismissed.

Writ of error dismissed.